

at

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOSEPH BREITFELDER : Case No. C-1-01-617
Plaintiff :
vs. : JUDGE BECKWITH
HAMILTON COUNTY SHERIFF :
SIMON LEIS, et al. : MAGISTRATE HOGAN
Defendants : **SECOND AFFIDAVIT OF STEPHEN
K. SHAW IN OPPOSITION TO
MOTION FOR RECONSIDERATION**

STATE OF OHIO :
:ss
COUNTY OF HAMILTON :

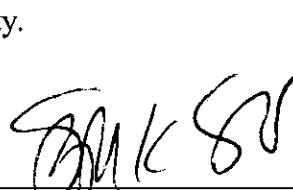
Now comes Stephen K. Shaw, who after being duly sworn, subscribed his name to the following statements:

1. I am Trial Counsel for the Hamilton County defendants in this action. I am an Assistant Hamilton County Prosecuting Attorney.
2. On March 7, 2003, I sent, via facsimile, the note attached hereto as Exhibit 4, which reflected Mr. Bernard's statement to me that Mr. Breitfelder might not agree to undergo an independent medical examination by Dr. Manges.
3. Attached hereto as Exhibit 5 is the Second Notice of Independent Medical Examination that was filed with the Court and served via U.S. Mail on March 13, 2003. Although I do not have documentation of the conversation, I believe that Mr. Bernard indicated that his client had agreed to undergo the Independent Medical Examination as of that date.
4. Attached hereto as Exhibit 6 is a letter sent April 1, 2003 via ordinary mail to Lucian

Bernard, confirming and reminding him of the Independent Medical Examination that was scheduled for April 9, 2003 at 9:00 AM.

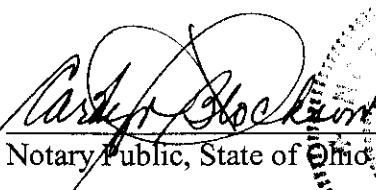
5. On April 3 a letter, signed by Susan Gertz was faxed to Mr. Bernard at 12:07 PM. This letter contained the reference to the IME on April 8, instead of April 9. Attached hereto as Exhibit 7 is the April 4, 2003 letter that was faxed to Mr. Bernard at 12:03 PM on April 4 to correct the mistaken letter sent in the afternoon of April 3. Prior to this letter, a telephone call was made by our office to Mr. Bernard's office in the early morning of April 4 to point out the typographical error in the April 3 letter and to correct the date of the appointment.
6. Hamilton County has paid both cancellation fees incurred as the result of Mr. Breitfelder's failure to appear at the scheduled time of his appointments, incurring a total cost of \$500.00, plus significant attorney and paralegal time to coordinate changes of dates and times and to obtain payment of these fees. Hamilton County agreed to forego collection of the first cancellation fee in exchange for Mr. Breitfelder's agreement to voluntarily appear for the IME, even though Hamilton County determined that the failure to appear was not the fault of Hamilton County.

FURTHER AFFIANT SAYETH NAUGHT.

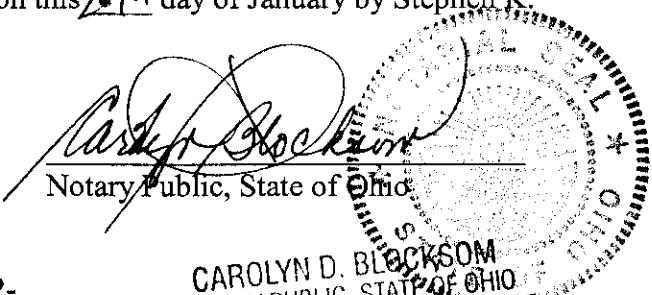


Stephen K. Shaw

Sworn to and subscribed in my presence on this 20th day of January by Stephen K. Shaw, who is personally known to me.



Notary Public, State of Ohio

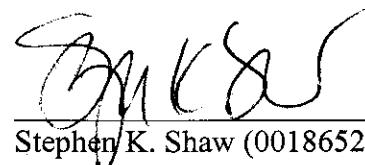


CAROLYN D. BLOCKSOM
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 05-18-05

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Affidavit has been manually filed with the Court and has been served upon the following counsel of record on this 20th day of January 2004 via U.S. Mail.

Lucian Bernard, Esq.
Attorney at Law
1224 Highway Avenue
Covington, Kentucky 41012



Stephen K. Shaw (0018652)
Assistant Prosecuting Attorneys

MICHAEL K. ALLEN
Hamilton County Prosecutor
Civil Division

230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Writer's Phone: 946-3071
Fax: (513) 946-3018

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 859-655-3703

To: Lucian J. Bernard
From: Stephen K. Shaw
Date: March 7, 2003
RE: Breitfelder v. Hamilton County

COMMENTS:

Dear Mr. Bernard:

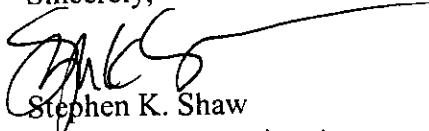
I understand from your telephone call that you anticipate that we can reach agreement on Mr. Breitfelder undergoing an examination if our office will waive the cancellation fees. Please let me know, as soon as possible if Mr. Breitfelder intends to appear for an examination.

We need to schedule depositions of fact witnesses and expert witnesses. I would suggest that we schedule a conference with Magistrate Judge Hogan and present an Agreed Entry modifying our expert report date, the discovery cutoff date and any other dates that we agree to modify. Certainly, we have time to work with in light of the trial date.

Please let me know a few dates and times when you would be available to meet with Judge Hogan. As soon as we know about the examination, we can schedule that and then establish appropriate cutoff dates to complete our preparation for trial or for dispositive motions.

Thank you for your attention to these issues.

Sincerely,



Stephen K. Shaw
Assistant Prosecuting Attorney

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EXHIBIT

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FILED

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MAR 13 2003

KENNETH J. MURPHY, Clerk
CINCINNATI, OHIO**JOSEPH BREITFELDER**: **CASE NO. C-1-02 617****Plaintiff**: **Judge Beckwith****vs.**: **SECOND NOTICE OF
INDEPENDENT MEDICAL
EXAMINATION OF JOSEPH
BREITFELDER****SIMON L. LEIS, JR., et al.**

:

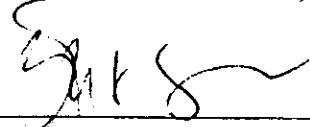
Defendants

:

Please take Notice that Defendants, by and through agreement of counsel, have rescheduled the Independent Medical Examination of the Plaintiff, Joseph Breitfelder for Wednesday April 9, 2003 beginning at 9:00 a.m. The Independent Medical Examination will be conducted by Kenneth J. Manges, M.D. at his office, which is located at The Kroger Building, Suite 1825, 1014 Vine Street, Cincinnati, Ohio 45202, telephone number (513) 784-1333.

The Independent Medical Examination will be conducted pursuant to the Federal Rules of Civil Procedure for all uses and purposes authorized thereby.

Respectfully submitted,

MICHAEL K. ALLEN
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

Stephen K. Shaw, 0018652
Susan M. Gertz, 0065319
Assistant Prosecuting Attorneys
Hamilton County, Ohio

230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202-2151
513/946-3071 (Shaw)
513/946-3027 (Gertz)
FAX 513/946-3018

TRIAL ATTORNEY FOR DEFENDANTS LEIS,
PORTUNE, NEYER, AND DOWLIN

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served this 13/17 day of March, 2003, by regular U.S. Mail to the following:

Lucian Bernard
Attorney at Law
1224 Highway Avenue
Covington, Kentucky 41012

Robert J. Gehring
Attorney at Law
30 Garfield Place, Suite 940
Cincinnati, Ohio 45202



Stephen K. Shaw, 0018652
Assistant Prosecuting Attorney

MICHAEL K. ALLEN
HAMILTON COUNTY PROSECUTING ATTORNEY

CIVIL DIVISION
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202-2151
PHONE: 513 946-3040
FAX: 513 946-3018
WWW.HCOPROS.ORG
WRITER'S DIRECT DIAL NUMBER
946-3071

April 1, 2003

Lucian J. Bernard, Esq.
Pearson & Bernard, PSC
1224 Highway Avenue
Covington, Kentucky 41011-1073

Re: Breitfelder v. Leis, et al.
Case No C-1-01-617

Dear Counsel:

This is a friendly reminder regarding the Independent Medical Examination, scheduled on Wednesday April 9, 2003 beginning at 9:00 a.m. The examination will take place at the office of Kenneth J. Manges, M.D., 1014 Vine Street, Suite 1825, Cincinnati, Ohio 45202. If Mr. Breitfelder wears glasses or contacts, he will need to have them with him. He will undergo psychological testing and vocational assessment.

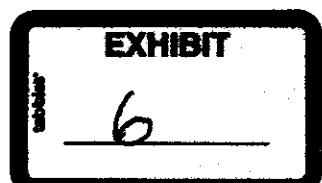
Thank you for your cooperation in this matter.

Very truly yours,



Stephen K. Shaw
Assistant Prosecuting Attorney

SKS/cdb
cc: Robert J. Gehring, Esq.



MICHAEL K. ALLEN
HAMILTON COUNTY PROSECUTING ATTORNEY

CIVIL DIVISION
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202-2151
PHONE: 513 946-3040
FAX: 513 946-3018
WWW.HCPRS.ORG
WRITER'S DIRECT DIAL NUMBER
946-3027

April 4, 2003

Via Ordinary Mail and Facsimile

Lucian J. Bernard, Esq.
Pearson & Bernard, PSC
1224 Highway Avenue
Covington, KY. 41011-1073

Re: Breitfelder v. Leis, et al.

Dear Mr. Bernard:

I write, once again, to confirm various details of our telephone discussion of this morning. You confirm that Mr. Breitfelder will appear for purposes of an independent medical examination by Dr. Kenneth Manges, 1014 Vine Street, Ste. 1825, Cincinnati, Ohio 45202, (513) 784-1333 on **Wednesday, April 9, 2003 at 9:00 a.m.** I was mistaken in my letter of April 3 that the examination was scheduled for Tuesday, April 8. Please accept my apology for any confusion that I may have caused. As we discussed, Mr. Breitfelder may have to present to Dr. Manges a second time, after the April 9 session, to complete the examination, in the event that Dr. Manges' schedule does not allow for the exam to be completed on that day.

Also, you confirmed that you are still holding the dates of **April 28 and May 5** for the depositions of lay witnesses Guy Kaufman, Helen Breitfelder, William Breitfelder and experts Dr. Jobalia and Dr. Shapiro. You indicated that you prefer that I notice Mr. Kaufman, directly, by subpoena, in order to schedule his deposition. You also indicated that you will notify me shortly as to the availability of your experts, Drs. Jobalia and Shapiro. If you have any questions, please do not hesitate to contact either Steve Shaw or myself. Thank you.

Sincerely,

Susan Marie Gertz
Assistant Prosecuting Attorney

EXHIBIT

7

Lucian J. Bernard, Esq.
Pearson & Bernard, PSC
April 4, 2003

Page 2

SMG/
cc: Robert Gehring, Esq.
File

MICHAEL K. ALLEN
Hamilton County Prosecutor
Civil Division
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: 946-3027
Fax: (513) 946-3018

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 859-655-3703

To: Lucian Bernard, Esq.
From: Susan M. Gertz
Date: April 4, 2003

DOCUMENTS	NUMBER OF PAGES*
Letter 04/04/03	1

COMMENTS:

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4 Apr '03 12:04PM Page 1

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Total: 0'44" Pages sent: 3 Pages printed: 0

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COMMENTS:

NUMBER OF PAGES:	1	DATE 01/01/03
DOCUMENTS:		

Date: April 4, 2003

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FAX COVER SHEET

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